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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1938.

COMMONWEALTH OF MASSACHUSETTS,
Complainant,
vs.
STATE OF MISSOURI et al.,
Respondents.

No. .....
Original.

RETURN

Of Respondent, St. Louis Union Trust Company, Trustee, and of Respondents, St. Louis Union Trust Company, Charles B. Maloy and Clarence E. Maloy, Trustees, to Rule to Show Cause Why Leave Should Not Be Granted to File Bill of Complaint.

CHARLES M. ROGERSON,
DANIEL N. KIRBY and
HARRY W. KROEGER,
Solicitors for Respondents, St. Louis Union Trust Company, Trustee, and St. Louis Union Trust Company, Charles B. Maloy and Clarence E. Maloy, Trustees.

ABBOTT, DREW, ROGERSON & CARR,
NAGEL, KIRBY, ORRICK & SHEPLEY,
Of Counsel.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

St. Louis Union Trust Company, Trustee under indenture of trust made February 14, 1921, by Madge Barney Blake, St. Louis Union Trust Company, Trustee under indenture of trust made January 11, 1929, by Madge Barney Blake, and St. Louis Union Trust Company, Charles B. Maloy and Clarence E. Maloy, Trustees under indenture

of trust made May 20, 1935, by Madge Barney Blake, being parties named as respondents in the Bill of Complaint proposed to be filed in the above-entitled cause, for their return to the rule of this Honorable Court entered November 7, 1938, ordering respondents to show cause why leave should not be granted the complainant, the Commonwealth of Massachusetts, to file its Bill of Complaint, respectfully state as follows:

1. Respondents aver that the proposed Bill of Complaint raises substantial issues as to:

(a) Whether the complainant, the Commonwealth of Massachusetts, has, upon the death of one of its residents, jurisdiction to levy and assess legacy and succession taxes with respect to intangible personal property which was transferred by that resident while a resident of said Commonwealth many years prior to her death, to Trustees in Missouri, and which at the time of such death was owned, held and being administered by such Trustees in Missouri, and, if the complainant has such jurisdiction with respect to property transferred upon trusts which the decedent transferor could have revoked during her life, whether it has such jurisdiction with respect to property transferred upon complete and irrevocable trust.

(b) Whether the complainant, the Commonwealth of Massachusetts, can assert such jurisdiction with respect to such transfers in trust, or any of them, consistently with the Constitution of the United States or any of the Amendments thereto.

(c) Whether the complainant, the Commonwealth of Massachusetts, being unable to levy its said tax with respect to said transfers or to reduce to judgment its claim for such tax with respect thereto because neither the property transferred nor the persons own-

ing it are within the reach of its process, has a right to establish its claim for such tax in this or any other Court and to obtain a judgment therefor and to obtain judicial process to enable it to collect such judgment.

2. These respondents further aver that the Bill of Complaint does not set forth a cause of action cognizable either at law or in equity as against these respondents for the following reasons:

(a) That upon the allegations set forth in the Bill of Complaint it appears that the complainant, the Commonwealth of Massachusetts, has no jurisdiction upon the death of Madge Barney Blake, one of its residents, to levy, assess or collect legacy and succession taxes with respect to the intangible personal property which was transferred by her many years prior to her death to these respondents, as Trustees, in Missouri, and which at the time of her death was owned, held and being administered by these respondents, as Trustees,—that is to say, no jurisdiction exists either with respect to the property transferred upon revocable trust or that transferred upon irrevocable trust.

(b) That upon the allegations set forth in the Bill of Complaint it appears that the complainant, the Commonwealth of Massachusetts, cannot assert such jurisdiction to tax the intangible personal property which was transferred by said Madge Barney Blake to the respondents, as Trustees, in Missouri, and which at the time of her death was owned, held and being administered by respondents in Missouri, because such asserted jurisdiction is in violation of the Constitution of the United States and the Amendments thereto, particularly the Fourteenth Amendment.

(c) That upon the allegations set forth in the Bill

of Complaint it appears that at the time of the death of said Madge Barney Blake, the legal title to, and the possession, management and control of, the intangible personal property transferred was vested in these respondents, as Trustees, and was beyond the constitutional jurisdiction of complainant, the Commonwealth of Massachusetts.

(d) That upon the allegations contained in the Bill of Complaint it appears that the complainant, the Commonwealth of Massachusetts, being unable to levy or collect a legacy or succession tax upon the death of Madge Barney Blake with respect to the intangible property transferred by her to these respondents, as Trustees, or to reduce its claim for such taxes to judgment, because neither the property transferred nor the persons owning it are within the reach of its process, has no right to establish its claim for such tax in this or any other Court or to obtain a judgment therefor or to obtain judicial process to enable it to collect such judgment.

(e) That upon the allegations set forth in the Bill of Complaint it appears that the assertion by the complainant, the Commonwealth of Massachusetts, of a right to establish and enforce its said tax, is an assertion of extra-territorial rights and in violation of the Constitution of the United States and the Amendments thereto.

3. These respondents state that they have no cause to show why leave should not be granted to complainant, the Commonwealth of Massachusetts, to file its Bill of Complaint herein, but, on the contrary, join in the prayer that such leave be granted to the end that all issues raised by the Bill, including legal contentions as to whether a cause

of action is the. by stated, be fully adjudicated by this Honorable Court.

Respectfully submitted,

CHARLES M. ROGERSON,
DANIEL N. KIRBY and
HARRY W. KROEGER,
Solicitors for Respondents, St. Louis Union Trust Company, Trustee, and St. Louis Union Trust Company, Charles B. Maloy and Clarence E. Maloy, Trustees.

ABBOTT, DREW, ROGERSON & CARR,
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